165-340

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 619.

THE DISTRICT OF COLUMBIA, APPELLANT,

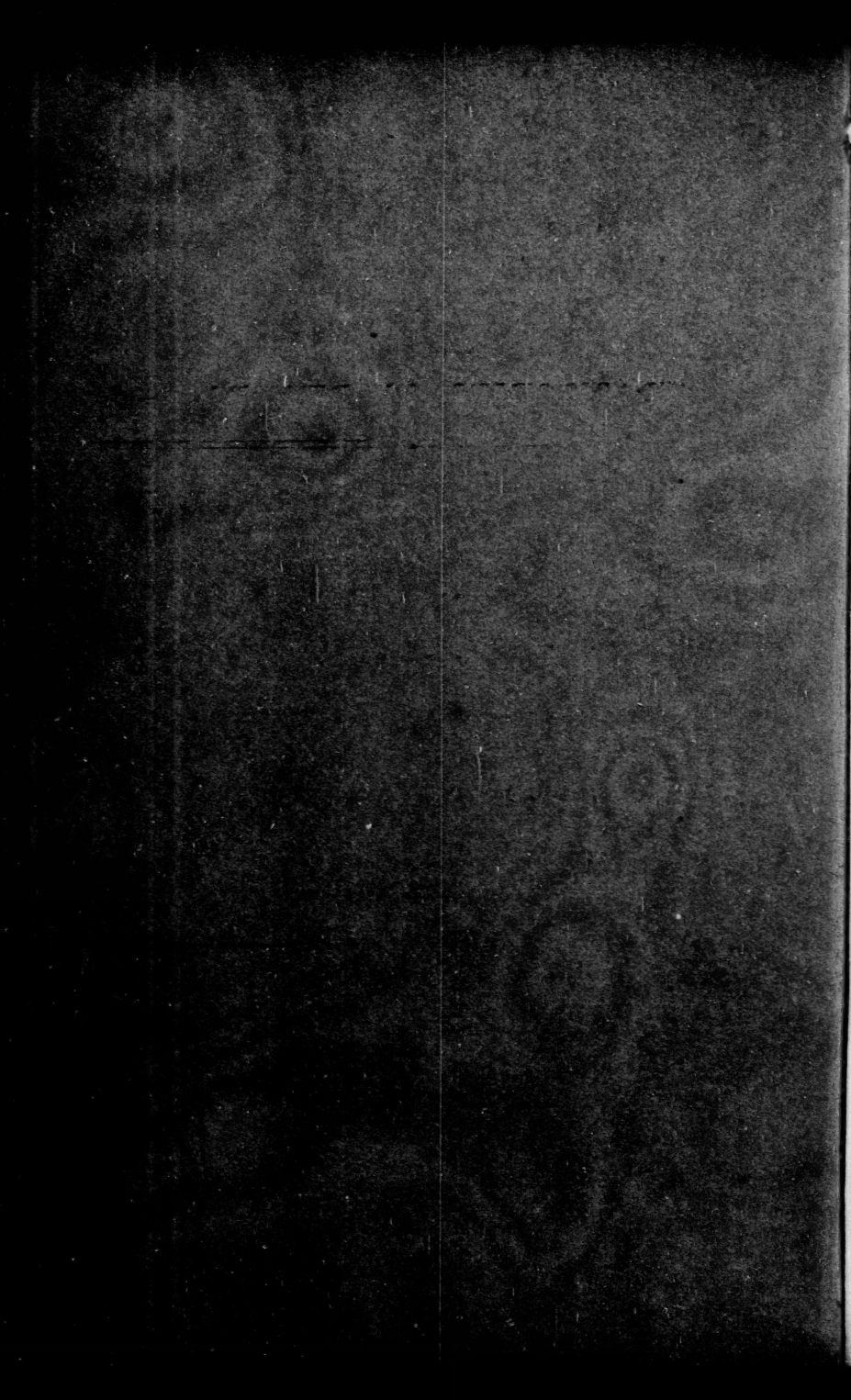
vs.

JOSEPH T. H. HALL.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 6, 1896.

(16398.)



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1 In the Court of Claims.

JOSEPH T. H. HALL)
vs.) No. 224.
THE DISTRICT OF COLUMBIA.)

I. *Petition.—Filed December 13, 1880.*

To the Honorable Court of Claims:

The petition of Joseph T. H. Hall, a citizen of the United States residing in Washington City, in the District of Columbia.

The claimant shows to the honorable court as follows, to wit:

1st. That the claimant on the day of , in the year one thousand eight hundred and seventy, duly made and executed with the board of public works of the said District a certain contract, known and described as contract No. 320, for furnishing broken stone on Seventh street road, in the county of Washington, D. C., and that he has no copy of the said contract, that furnished to him having been destroyed by fire, and he therefore prays the honorable court will call upon the honorable Commissioners of the District of Columbia to furnish the original of said contract for the purposes of this suit, and when so furnished it may be read as a part of this petition, as incorporated herein.

2nd. The petition' further shows that he fully and faithfully performed his undertakings in the said contract, and that there was due to him under the same the sum of twelve thousand five hundred and eighty-three dollars and nin'ty-seven cents according to the measurement and computation of the said District of Columbia.

3d. That the said District of Columbia when called upon to pay the said sum acknowledged to be due and owing to the petitioner under and by virtue of said contract in current funds, as called for by the same, declined and refused so to do and offered to the petitioner payment in certificates of indebtedness, which the petitioner declined to take, save under protest; that they were not received by him in payment of his claim, but on account thereof, at the market value of said certificates, and that said certificates to the amount of eleven thousand and nine hundred dollars were delivered and accepted by the petitioner under the said protest and declaration.

2 4th. The petitioner further shows that the market value of said certificates at the time of said delivery of them was 50 cents on the dollar, and that the petitioner by the sale of them realized only the sum of five thousand nine hundred and fifty dollars, and that there is now due and owing to the petitioner on the original contract, No. 320, the sum of five thousand nine hundred and fifty dollars, with interest from the 10th day of April, 1872, as appears by this bill of particulars filed herewith, to wit:

For furnishing broken stone on Seventh-street road	$12,583.97
Credit.	
$12,583.97, of which $11,900 @ 50 per cent discount	6,633.97
	5,950.00

5th. The petitioner further shows that the said contract, No. 320, was extended on the nineteenth day of October, 1875, and that said copy of

the extension delivered to the petitioner was also destroyed by fire and can not now be produced, and the petitioner prays that the honorable District Commissioners may be called upon to furnish the original of the same to be read as a part of this petition as if incorporated therein, and the petitioner says that he faithfully performed all of the undertakings stipulated for on his part in the said extension, in manner and form therein specified, and that the measurement of the work and statement of the account thereof is as follows:

7th st. culvert, 252.8 c. yd. excavation, @ .30		$75.84
15,300 M brick, @ $23		351.90
192 c. yd. stone masonry, @ $7		1,344.00
14th st. culvert, 143.33 c. yd. rock excavation, @ $1		143.33
28,107 M brick, @ $23		846.46
519.94 c. yd. stone mas'nry, @ $7		3,639.58
		6,401.11
By 3.65 bonds	$2,250.00	
Assignment to Richie	1,224.65	
		3,474.65
		2,926.46

And the claimant demands payment of $5,950.00, with interest thereon at the rate of six per centum per annum from the 10th day of April, 1872, and on the residue, $2,926.43, from January 1st, 1877, till paid.

The claimant further states that no action upon the said claim has been had by the board of audit of the District of Columbia.

That as to $2,190.75 of the balance due on claim stated in the 5th paragraph of petition, the claimant says that he assigned the same to one S. J. Ritchie, but that the consideration not having been paid for said assignment, the claim equitably belongs to claimant.

And as to the residue of said claim he has not assigned the same.

JOSEPH T. H. HALL.

DISTRICT OF COLUMBIA, *ss:*

Joseph T. H. Hall, having been sworn according to law, says that he is the claimant in the above-entitled cause, and believes the facts stated in the foregoing petition to be true.

JOSEPH T. H. HALL.

Sworn to and subscribed before me this seventh day of December, 1880.

THOMAS W. SORAN,
Notary Public.

3 II. *Traverse—Filed January 5, 1881.*

And now comes the Attorney-General on behalf of the District of Columbia, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that petition be dismissed.

THOMAS SIMONS,
Asst. Attorney-General.

4 III. *Findings of fact.—Filed June 1, 1885.*

These cases coming on to be heard upon the petition of the claimant Hall and the intervening petition of the claimant Ritchie, the court, from the proofs and evidence offered by the respective parties, finds the following facts:

I.

On the 19th October, 1875, the Commissioners of the District of Columbia entered into a contract with the claimant Hall whereby it was agreed that he should "construct a stone culvert with brick arch on the Fourteenth street road near Piney Branch, for which he should receive the prices established and paid by the board of public works for work of similar character."

II.

The board of public works has paid for work of similar character in the county $7 a perch for masonry and $23 a thousand for brickwork.

The claimant Hall constructed 515.94 perches of masonry, for which he was paid at the rate of $6.50 per perch, leaving due and unpaid a balance of $258.

The claimant Hall also constructed brickwork to the extent of 28,738 bricks; he was paid for 18,738 bricks, leaving due and unpaid for 10,000 bricks, $230.

III.

On the 1st January, 1877, there was due to the claimant Hall, upon the contract set up in his petition, upon an account stated by the defendants, a balance of $2,190.75, which is still due and unpaid.

IV.

On the 6th October, 1877, the claimant Hall assigned and transferred, by an instrument in writing, to the claimant Ritchie, $2,020.63 of the claim described in the preceding finding. The nominal consideration agreed upon was $600 in money, and 200 feet of sewer pipe of the nominal or tested value of $500, which pipe was to be held subject to Hall's order. The claimant Ritchie has never paid the said sum of $600, and the claimant Hall has never demanded the delivery of the said pipe, but has received other pipe from Ritchie, for which he has not paid.

V.

On the 8th February, 1878, the claimant Hall assigned to the claimant Ritchie the balance of said sum of $2,190.75, to wit, $170.12, and at the same time received in consideration the sum of $68.

CONCLUSIONS OF LAW.

And on the foregoing findings of fact the court decides as conclusions of law:

The claimant Hall should recover the balance of $258 and $230 set forth in Finding II, and the balance of $600 set forth in Finding IV, amounting to $1,088, as of January 1, 1877.

The claimant Ritchie should recover, as assignee of Hall, the claim of $2,190.75 set forth in Finding III, less the sum of $600 remaining due by him to Hall, as set forth in Finding IV, to wit, the balance of $1,590.75, as of January 1, 1877; and this recovery shall not prejudice or in any way affect the account subsisting between the parties concerning the sewer pipe referred to in Finding IV.

BY THE COURT.

5 IV. *Judgment of the court.—Entered June 1, 1885.*

At a Court of Claims held in the city of Washington on the first day of June, 1885, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimants, and do order, adjudge, and decree that the said Joseph T. H. Hall do have and recover, in the manner provided by the act of June 16, 1880, chapter 243, the sum of one thousand and eighty-eight dollars upon debts of the District of Columbia due and payable January 1st, 1877, within the meaning of the sixth section of the said act, and that the said Samuel J. Ritchie do have and recover in like manner the sum of fifteen hundred and ninety dollars and seventy-five cents upon debts of the District of Columbia due and payable January 1, 1877, within the meaning of the sixth section of said act.

BY THE COURT.

6 V. *Motion for new trial under act of February 13, 1895, and allowance of same.—Filed April 3, 1895.*

JOSEPH T. H. HALL
vs.
THE DISTRICT OF COLUMBIA. } No. 224.

And now comes the plaintiff, Joseph T. H. Hall, in accordance with the provisions of "An act to amend an act entitled 'An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes,' approved June 16th, 1880," said amendment was approved February 13th, 1895, and moves the honorable court for a new trial of the said cause, and for ground for said motion says: That the said action or petition therein was for the recovery of monies due the petitioner from the District of Columbia for broken stone or McAdam furnished the said District under a contract known and described as contract No. 320, made the 31st day of May, 1872, and for work done by the petitioner for the said District of Columbia under an extension of the said contract No. 320, made on the 19th day of October, 1875, and the petitioner shows that at the trial of the said cause the court gave the

petitioner judgment against the District of Columbia, based upon the contract rates instead of the rates fixed by the board of public works, which said rates, fixed by the said board aforesaid, the above-mentioned act of Congress provides the petitioner is entitled to receive. And the petitioner further avers that in accordance with contract rates allowed by the honorable court, the amount adjudged the petitioner was the sum of $18,323.27, whereas the amount due the petitioner according to the rates established by the board of public works was $30,664.52, leaving a balance due to the petitioner of $12,341.25 with interest, as set forth in the bill of particulars of the same, to wit:

7 *District of Columbia, to Joseph T. H. Hall, Dr.*

9,088.78 lin. ft. McAdam 16x1 ft. deep, 16,157.83 square yards, at $1.50 per yd.		$24,236.73
352 cub. yds. excavation for culvert, 7th st. road (made ground), at 50 cts.		176.00
207.46 perches masonry for culvert, 7th st. road, at $7 per perch		1,452.22
15,300 bricks for culvert, 7th st. road, at $23		351.90
89 ft. shoreing " " " " at $1.08		96.12
515.94 perches masonry for culvert, 14th st. road, at $7 per perch		3,611.58
18,738 bricks for culvert, 14th st. road, at $23		430.97
74 cub. yds. rock excavations for culvert, 14th st. road (in trench), at $1.50		111.00
1,320 sqr. yds. gravel, 6 in. deep, repairing Piney Branch road, at 15 cts.		198.00
By contract rates:	*Cr.*	
9,088.78 lin. ft. McAdam, 16x1 ft. deep, 4,985.68 cub. yds	$12,461.06	
352 cub. yds. excavation, 7th st. culvert	141.12	
207.46 perches masonry, 7th st. culvert	1,348.49	
15,300 bricks, 7th st. culvert	351.90	
89 ft. shoreing, " " "	96.12	
515.94 perches masonry, 14th st. culvert	3,353.61	
18,738 bricks, 14th st. culvert	430.97	
74 cub. yds. rock excavation, 14th st. culvert	74.00	
220 cub. yds. gravel, repairing Piney Branch road	66.00	
	18,323.27	30,664.52
		18,323.27
To balance		12,341.25

And the claimant moves the honorable court to grant him a new trial of the said cause, and on such new trial claims that payment be entered in his favor for the sum of $12,341.25, with interest at the rate of 3.65 per annum.

The said claimant avers that he has not assigned said claim or any part thereof.

JOSEPH T. H. HALL.

DISTRICT OF COLUMBIA, *ss:*

Joseph T. H. Hall, having been sworn according to law, says that he is the claimant in the above-entitled cause, and believes the facts stated in the foregoing petition to be true.

JOSEPH T. H. HALL.

Sworn to and subscribed before me this twenty-eighth day of March, 1895.

ARTHUR R. COLBRUN,
Notary Public.

Allowed by the court.

WILLIAM A. RICHARDSON,
Chief Justice.

APRIL 8, 1895.

8 VI. *Findings of fact and conclusion of law.—Filed June 22, 1896.*

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts as follows:

The claimant, under his contract No. 320, furnished, spread, and broke macadam according to the specifications of his contract to the amount of 5,160.50 cubic yards, or 15,481.50 square yards—

Which, at board rates of $1.50 per square yard, amounted to	$23,222.25
Claimant has received therefrom contract rates	12,461.06
Leaving a balance at board rates of	10,761.19
But as to the 940.40 cubic yards the claimant did not furnish the stone there should be deducted the cost thereof, paid by the District of Columbia, $2.23 per cubic yard, amounting to	2,097.00
	8,664.19

Work was completed January 1, 1877.

CONCLUSION OF LAW.

Upon the foregoing findings the court decides as a conclusion of law that the claimant is entitled to recover the sum of eight thousand six hundred and sixty-four dollars and nineteen cents ($8,664.19), due and payable January 1, 1877.

BY THE COURT.

VII. *Opinion of the court.*

WELDON, J., delivered the opinion of the court:

This is a proceeding under the act of June 16, 1880, entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes" (21 Stat. L., 284), as amended by the act of February 13, 1895, entitled "An act to amend said act" (28 Stat. L., 664).

In the former trial of this case judgment was rendered for claimant, but no allowance was made for board rates.

The claimant, on the 3d day of April, 1895, filed a motion for a new trial, which was allowed on April 8, 1895.

In the retrial of the cause the court makes the foregoing findings, and upon those findings gives a judgment for eight thousand six hundred and sixty-four dollars and nineteen cents.

The act of February 13, 1895, under which the motion was made and allowed, is as follows:

"That in the adjudication of claims brought under the provisions of the act entitled 'An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdic-
9 tion on the Court of Claims to hear the same, and for other purposes,' approved the sixteenth of June, eighteen hundred and eighty (Twenty-first Statutes at Large, page two hundred and eighty-four), the Court of Claims shall allow the rates established and paid by the board of public works; and that whenever said rates have not been allowed, the claimant or his personal representative shall be entitled, on motion made within sixty days after the passage of this act, to a new trial of such cause."

Two questions have arisen in the litigation incident to said act: First, whether a party dissatisfied with the former judgment is entitled in the new trial to litigate the whole case, and thereby compel the court to reexamine the evidence upon the whole case and determine anew the rights of parties upon all the items of the claim.

Second, whether the form of judgment under the amendatory act is the same that was adopted by the court under the original act, the effect of which judgment was to give the party interest from the time the claim was due and payable. It is insisted by counsel for the defendant that the judgment to be rendered in the new trial shall operate in præsenti, and not retroactively, as under the act of original jurisdiction.

As to the first question: Under the amendatory act of 1895 it is made the duty of the court to grant a new trial in cases where board rates were not allowed, confining the power and jurisdiction of the court to such cases alone; and in cases where such rates were allowed the court is without jurisdiction to grant a new trial.

The purpose of the amendatory act was to give a remedy to parties who had not obtained in the former litigation the benefit of board rates, and thereby to place them upon an equality with parties who had by the judgment of the court been allowed such rates in the adjustment of their rights against the defendant. In the passage of the act of 1895 Congress did not intend to open for reinvestigation all the cases which had been settled in the litigation under the act of 1880, and thereby subject the court and the parties to the onerous duty of a reexamination of all the cases upon all the questions incident to the litigation. The act of 1895 is not predicated upon the theory that the court made a mistake either as to the facts or the law upon which the judgment was founded. Congress did not assume, in the passage of the amendment to the act of 1880, that there was error of fact or of law in the judgments rendered.

This court had found the facts in the cases, and upon those facts had given a judgment upon a certain theory of the law, which in the cases hereinafter cited was determined by the Supreme Court to be a correct determination of the legal rights of the parties. The duty of the court in the new trial is to allow board rates upon the items of the claims heretofore established by the findings of the court, when board rates were established as to such items, and the claimant has not recovered such rates, but only recovered contract rates. The power and jurisdiction of the court is circumscribed to the application and allowance of board rates as to items of claim entitled to board rates under the new act, and which have been by the former judgment of the court subjected to the application of contract rates.

In this construction of the act of 1895 the court is not deprived of that common-law power incident to courts to correct clerical errors and mistakes. That power is incident to all courts, to be exercised when the condition of the case is such that it can be.

As to the second question—the form of the judgment: Under the original act of June 16, 1880, the judgments were to be paid in
10 3.65 bonds authorized by the act of June 20, 1874 (18 Stat. L., 120). By the act of June 16, 1880, it is provided that before the delivery of such bonds in payment of judgments the coupons shall be detached from the date of such bonds to the day upon which the claim

was due and payable. The form of the judgment under the original act stated the date when the claim was due and payable, and from that date the bonds were to bear interest by having attached to them such coupons as represented the interest from that date.

At the time the judgment was rendered in the former hearing the legal right of the claimant to compensation was measured by the terms of his agreement, and not by the acts of the board of public works in dealing with similar work. It was so decided by this court in this and many other cases. In the case of Barnard, administrator, v. The District of Columbia (20 C. Cls. R., 257) it is held that the act of the board of public works in establishing prices could not control an express contract subsequently made, and that an overpayment made by the board of audit might be recovered back. That case went to the Supreme Court and was affirmed.

The Supreme Court in substance held that the entry in the journal of the board could not affect the plaintiff's contract; that the board could not in that way either make a new contract or alter the one previously made so as to bind the District (Barnard v. District of Columbia, 127 U. S., 409). In the case of Barnes v. District (22 C. Cls. R., p. 366), this court decided the same general principle, and that case was referred to and approved by the Supreme Court in the Barnard Case.

It is insisted that although the act of February, 1895, is a remedial statute, it must be strictly construed, inasmuch as the allowance of board rates by that statute was a mere gratuity, and therefore the law should not be extended by liberal construction beyond the technical right of board rates to be recovered as of the date of the rendition of the judgment. The purpose for which the act of 1895 was passed is clearly set forth in the report of the Senate committee reporting the bill in a letter of the president of the Board of Commissioners of the District of Columbia embodied in said report, a portion of which is as follows:

"The board of public works, which was created by the act of Congress entitled 'An act to provide a government for the District of Columbia,' approved February 21, 1871, was charged with the entire control of municipal improvements in said District. The execution of these improvements was done under contracts with the board of public works, and at prices fixed by it. Several months after the commencement of these works the said board readjusted the contract price. These revised prices were technically called 'board rates.' In most cases where 'board rates' were allowed the modification of the contract so made was embodied in a written agreement in due form; in others, by written or oral orders or correspondence, which, through clerical inadvertence or other causes not affecting the intention of the contracting parties in the premises, had not reached the stage of a formal contract.

"Upon the abolition of the board of public works nearly all of the work in progress under contracts with that board at the time was suspended. Subsequently most of this unfinished work was recommenced and completed at board rates under new contracts, denominated 'extensions' of the suspended contracts, made with the Board of Commissioners, which succeeded the board of public works. The claims under consideration were mainly for compensation for work done under these so-called extensions. The duty of auditing the unsettled accounts of the

board of public works after its abolition, and the accounts for work done under the aforesaid extensions of contracts, was imposed by law upon a board of audit, composed of the First Comptroller and the (First Auditor) Second Comptroller of the United States Treasury Department.

11 This board audited and allowed accounts for work done at 'board rates' under the informal authority of the board of public works hereinbefore mentioned, thus adopting without material qualification a practice which appears to have been uniformly pursued by the latter board.

"The board of audit was evidently invested with complete and conclusive jurisdiction in the adjustment of accounts passed upon by it under that law. The statute made it the duty of the board 'to examine the audit for settlement all the unfunded or floating debt of the District of Columbia and the board of public works,' therein specified, among which were: 'Fourthly, 'claims existing or hereafter created for which no evidence of indebtedness has been issued arising out of contracts, written or oral, made by the board of public works' (Stat. at L., vol. 18, p. 118); 'fifthly, claims for which no evidence of indebtedness has been issued arising out of contracts, written or oral, made by or on behalf of the District of Columbia,' and issue to each claimant a certificate stating the amount found to be due to each, and on what account (Stat. at L., vol. 18, p. 118).

* * * * * * *

"The board of audit was abolished March 14, 1876 (U. S. Stat., vol. 19, p. 211), and jurisdiction over the claims under consideration vested in the United States Court of Claims by an act approved June 16, 1880 (U. S. Stat., vol. 21, p. 284). The Court of Claims appears to have at first inclined to favor the application of equitable principles to the adjudication of these claims; but its later decisions show a different ruling in this respect, mainly on the strict technical grounds that the allowance of rates different from those in the formal written contracts was incompatible with the law, which required all contracts of the board of public works to be in writing. When contractors who had been paid at the 'board rates' for work done under the informal agreement referred to applied to the Court of Claims for payments for work done under their new contracts, or so-called 'extensions' of contracts, they were met by a ruling on behalf of the District for a set-off against the sum found due them of the amount so paid them in excess of the rates specified in their formal contracts with the board of public works. So long as that court persists in the ruling it has made in these cases these claimants can only obtain relief through further action by Congress. Notwithstanding the fact that they took timely advantage of the act of Congress authorizing them to submit their cases to that court, the statutes of limitations would prevent them from obtaining a hearing in the District courts. If the measure recommended by the Commissioners should be enacted no special appropriation would be required to pay judgments that might be rendered under it."

If we assume as the basis and reason of the act of 1895 the facts and condition of the claims as set forth in this letter, we are enabled to discern with clearness the character of the claim now asserted by the claimant. In the litigation under the act of 1880 the court properly applied

the terms of the contract to work done under express agreements, and allowed a compensation measured by the terms of such agreements, thus discriminating between contractors who were paid board rates and those contractors who were to be compensated according to the strict requirements of their contracts. As is said in the letter of the president of the board, embodied in and adopted in the report of the committee, the Court of Claims determined the right of the contractors "mainly on strict technical grounds that the allowance of rates different from those in the formal written contracts was incompatible with the law which required all contracts of the board of public works to be in writing." Under that application of the law certain contractors were not only denied the right of recovery of board rates, but where an allowance had been made the District pleaded such excess as a counterclaim, and recovered under that plea.

Unforeseen difficulties had arisen in the performance of the work, and to relieve parties from that hardship board rates were established, but certain parties had contracted to do the work at a stipulated price, and were not relieved from the hardship by the fact that a condition had arisen not anticipated by them when they entered into their agreements. The technical terms of the law requiring all contracts to be in writing bound them to the strict letter of their agreements and measured their com-
12 pensation by the obligations of the contract, thus excluding them from all participation in the increased equitable rates established and paid by the board of public works.

The act of 1895, providing for a new trial where board rates were not allowed, was intended to relieve parties from the consequence of being held to the strict and technical requirements of their contracts and the law, and to afford them grounds of equitable relief in the recovery of board rates.

In the opinion of Congress (considering all the circumstances under which the labor was performed and the increased hardship upon which board rates were established and paid) there was upon the part of persons bound by and receiving contract rates an equitable claim for relief, and upon that theory the act of 1895 was passed as an amendment to the act of 1880.

The relief afforded by the new trial is not therefore a mere gratuity, but the recognition of a legal right founded upon an equitable claim, which could be enforced so long as the act of 1880 remained unamended, and the Court of Claims was compelled to adjust the rights of parties upon the strict requirements of contracts and the terms of existing law. The purpose of the amendment is to establish and grant an equality of right between those entitled to receive board rates under the law as it existed prior to its enactment and those persons doing the same character of work who were compelled to receive less on account of the enforcement against them of the strict requirements of their agreements.

The act of 1895 is an amendment to the act of 1880, and becomes a part of that act in the determination of cases which have not been tried and in cases where new trials are granted.

The rights of the parties are subjected to all the provisions of the act of 1880 and the provisions of the act of 1895, which, by the allowance

of board rates, has enlarged the rights of claimants from contract to board rates.

By the act of 1880 the claimant is entitled to receive in payment certain bonds with the interest coupons detached from the date of such bond to the time when such claim became due and payable. The effect of the act of 1880 was to allow interest at the rate of the bond from the time the claim was due and payable to the time of the rendition of the judgment; and so, in accordance with that right or requirement, the judgment of the court recited the time when the claim was due and payable, so as to indicate to the Department to what period the coupons were to be detached in the satisfaction of the judgment of the court.

The payment in that form gave to the claimant a substantial and material element of compensation for the labor which had been performed for the defendants, and was in effect the allowance of interest from the time when the claim should have been paid to the time the judgment was obtained.

It must be assumed that it was known to Congress that such had been the practice of the court under the act of 1880, and Congress not having made any provision in the act of 1895 changing the act of 1880 as to payment and the form of the judgment which by judicial construction was adopted, it is safe to conclude that it was not intended to differentiate the rights of the parties in judgments rendered under the act of 1880 as amended by the act of 1895 from the rights of parties as to board rates under the act of 1880.

As we have said, equality was recognized as the equitable right of the parties heretofore bound by the strict requirements of their contracts, and that equality must be preserved to the full extent of the rights heretofore given parties recovering compensation upon the basis of board rates.

It is the opinion of the court that the proper judgment to be entered is the form adopted heretofore in cases where judgments have been entered against the defendants in suits determined under the act of 1880.

13 VIII. *Judgment of the court.—Entered June 22, 1896.*

JOSEPH T. H. HALL
vs.
THE DISTRICT OF COLUMBIA. } No. 224.

At a Court of Claims held in the city of Washington on the 22d day of June, A. D. 1896, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said Joseph T. H. Hall do have and recover, in the manner provided by the acts of February 13, 1895, and June 16, 1880, the sum of eight thousand six hundred and sixty-four dollars and nineteen cents upon debts of the District of Columbia due and payable January 1st, 1877, within the intent and meaning of said acts.

BY THE COURT.

14 IX. *Application for and allowance of appeal.*

JOSEPH T. H. HALL
vs.
THE DISTRICT OF COLUMBIA. } No. 224.

From the judgment rendered in the above-entitled cause on the 22d day of June, A. D. 1896, in favor of the claimant the defendant, by the Attorney-General, on the 3d day of September, 1896, makes application for and gives notice of an appeal to the Supreme Court of the United States.

J. E. DODGE,
Asst. Attorney-General.

Filed September 3, 1896.

Allowed in vacation October 1, 1896.

WILLIAM A. RICHARDSON,
Chief Justice.

15 In the Court of Claims.

JOSEPH T. H. HALL
vs.
THE DISTRICT OF COLUMBIA. } No. 224.

I, John Randolph, assistant clerk of the Court of Claims, do certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusions of law thereon, and of the judgment entered June 1, 1885; of the motion for new trial under the act of February 13, 1895; of the findings of fact and conclusion of law filed June 22, 1896; of the opinion of the court; of the judgment of the court entered June 22, 1896; of the application for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court of Claims, at Washington City, this 3d day of October, A. D. 1896.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Case No. 16398. Court of Claims. Term No., 619. The District of Columbia, appellant, vs. Joseph T. H. Hall. Filed October 6th, 1896.

Office Supreme Court, U. S.
FILED.
JAN 2 1897
JAMES H. McKENNEY,
CLERK.

165-340 Dec. 330

IN THE

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Appeal from the Court of Claims.

BRIEF FOR APPELLEE.

EDWIN FORREST,
For Appellee.

LAW REPORTER PRINT.

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BRIEF FOR APPELLEE.

This is an appeal from the decision of the Court of Claims, rendered in a proceeding under the Act of June 16, 1880, entitled "An Act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes" (21 Stat. L. 284), as amended by the Act of February 13, 1895, entitled "An Act to amend said Act." (28 Stat. L. 664.)

The only question raised by this appeal is embraced in the first assignment of error by the appellant.:

> "The court erred in adjudging the debts, for which judgments were rendered, due and payable on a day prior to the rendition of the judgment." (Appt. B. 18.)

This case was originally instituted under the Act of June 16, 1880, to recover a balance claimed by the plaintiff for

work done and materials furnished under certain contracts entered into by him with the District of Columbia. A hearing was had on his claim, thus made, which resulted in a judgment in his favor; but no claim was made by him prior to the passage of the Act of February 13, 1895, for an allowance for the difference between the rates or prices agreed upon and those established and paid by the board of public works. Under the provisions of the latter act he filed a motion for a new trial, which was allowed, and the court made the following findings of fact in favor of claimant:

1. That, after deducting certain payments and credits, there was due the appellee for materials furnished and labor performed under his contract, at board rates, the sum of $8,644.19.

2. That the work was completed January 1, 1877.

These findings of fact are conclusive.

Mahan *vs.* U. S., 14 Wall. 109.

Stone *vs.* U. S., October Term of this Court, No. 113.

In the latter case the court says:

> "The findings of the Court of Claims in an action at law determine all matters of fact precisely as the verdict of a jury."

Whether or not a jury should allow interest in any particular case has been repeatedly held to be a matter within its sound discretion and not the subject of review.

Upon these findings the court's conclusion of law is, that the appellee is entitled to recover the sum of $8,644.19, due and payable January 1, 1877.

The appellant's contention is, that under the Act of February 13, 1895, the amount to which appellee was found to be entitled did not become due and payable until the date of the judgment.

This act provides:

> "That in the ~~jurisdiction~~ adjudication of claims brought under the provisions of the act entitled 'An Act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes,' approved the sixteenth of June, eighteen hundred and eighty (21 Stat. L. 284), the Court of Claims shall allow the rates established and paid by the board of public works; and that whenever said rates have not been allowed, the claimant or his personal representative shall be entitled, on motion made within sixty days after the passage of the act, to a new trial of such cause."

Now, in arriving at the meaning of this statute, the court may consider contemporaneous events, the situation as it existed, and as it was pressed upon the legislative body, the circumstances surrounding the appeal to Congress, the report of the committee of each House of Congress and the evil to be remedied.

Church of Holy Trinity *vs.* U. S. 143 U. S. 457.

By the Act of February 21, 1871, the board of public works was charged with the entire control of municipal improvements in said District. These improvements were commenced to be done under written contracts at fixed prices. Several months after, the board readjusted the prices, made them uniform, and called them "board rates." These rates were embodied in contracts by formal written agreements, by written or oral orders, or correspondence; and thereafter work was performed at these rates. The board of public works was abolished and the work was suspended. Subsequently, under the District Commissioners, most of this unfinished work was recommenced and completed upon an understanding and agreement of the District with its contractors that for the work performed under them these rates should be allowed and paid, and a

circular to that effect was issued to all contractors. At the same time it was agreed that 3.65 bonds, then rating at 65 to 75 cents, should be received at their par value by the contractors in the stead of monthly cash payments.

After the abolition of the board of public works the duty of auditing the accounts of these contractors was imposed upon a board of audit, whose duty it was "to examine and audit for settlement all the unfunded or floating debt of the District of Columbia and the board of public works," therein specified, among which were:

> "Fourthly, claims for which no evidence of indebtedness has been issued arising out of contracts, written or *oral*, made by the board of public works;"
>
> "Fifthly, claims for which no evidence of indebtedness has been issued arising out of contracts written or *oral*, made by or on behalf of the District of Columbia"—

and issue to each claimant a certificate stating the amount found to be due to each.

18 Stat. L. 118.

This board adopted the practice of the board of public works and audited and allowed accounts for work done at "board rates," under contracts made as above stated. The board of audit was abolished March 14, 1876.

That these board rates were only a reasonable compensation for the work appears from the sworn statement of the District Commissioners. These rates were made the basis of assessments against the property abutting the improvements, and have been collected from the property owners. By the Act of June 16, 1880 (21 Stat. L. 284), jurisdiction over the claims under consideration was vested in the Court of Claims. At first said court was inclined to favor application of equitable principles to the adjudication of these claims; but afterwards the court held that these board rates could not be recovered where there were no

written contracts with the board of public works, on the technical ground that the law required all contracts of said board to be in writing.

The above history of the circumstances connected with these claims is set forth in the report of the Senate Committee, in pursuance of which the Act of February 13, 1895, was passed. This report is quoted from, in the opinion of the Court of Claims, forming a part of the record in this appeal, and printed in full in the brief of appellee in the case of District *vs.* Sheckels et al., No. 618, on docket of this court.

The said report, referring to the Act of June 16, 1880, further says:

> "In addition to the grounds stated by the Commissioners, your committee would further add that it clearly appears from the contemporaneous report of the Committee on the District of Columbia at the time of the passage of this Act of June 16, 1880, that it was the intent of that act that the claims referred under it should be so audited and allowed. That committee had before it schedules of claims computed at these rates, and the annual report of the Commissioners' for 1877 had so reported them as outstanding claims."

The foregoing facts clearly show that the Act of February 13, 1895, does not confer on these claimants a mere gratuity. It removes a technical construction, but it does not add one iota to their equitable rights. The act creating the board of audit made no distinction between the written and oral contracts of the board of public works, whether the claims arising thereunder were already existing or thereafter to be created. There is no question as to the good faith of these claimants, that the work was done, as to the consideration received by the District, as to the advantage gained by the District when the contractors agreed to take bonds at par which were worth only 65 to 75 cents on the dollar. Congress, at the time of the passage of the Act of June 16, 1880,

knew these facts and intended that the contractors should receive "board rates." And Congress at the time of the passage of the Act of February 13, 1895, also knew these facts, and in addition thereto, knew that because of the defects in the law of 1880, its intentions were not being carried out; and that these intentions should be carried out, it passed the Act of 1895.

The practices of the board of public works as to making informal contracts must have been known to Congress because when it created the board of audit it imposed on said board the duty to examine and audit for settlement, claims then existing or thereafter created, arising out of contracts, written or *oral*, made by the board of public works, and to issue to each claimant a certificate stating the amount found to be due to each. Clearly a ratification of these board rate oral contracts. And as above stated:

> "It clearly appears from the contemporaneous report of the Committee on the District of Columbia, at the time of the passage of this Act of June 16, 1880, that it was the intent of that act that the claims referred under it should be so audited and allowed."

So that, we submit, from the very beginning of congressional action upon these claims the intention is apparent that "board rates" should be paid upon all these contracts. Under the boards of audit and of public works these rates were paid, facts well known to Congress, and in order that there should be equality, and that all contractors should be placed on the same footing, the Act of February 13, 1895, was passed. Congress knew that in the cases pending in the Court of Claims full justice could not be done the claimants, because their contracts for "board rates" were not in writing. It knew that the claimants were asserting their rights to such rates; that they were entitled to them, but because of the ruling of the court, relief could not be had as the law then existed; and to give the relief sought it amended the law of 1880 and said that in the adjudication

of claims brought under the provisions of said law, the court shall allow the rates established and paid by the board of public works. In other words, the court in making its calculations shall substitute in the place of the contract price the board rates. This is the only amendment the act makes. It does not attempt to say at what time the work shall be declared to be finished—at what date the amount should be due and payable—but only this: That the court strike from the written contract the price therein stated and insert the board rate, and upon that basis make the calculation. In no other particular is the act of June 16, 1880, or the decisions or practice of the court in respect thereto attempted to be changed or amended.

And that equality may obtain as to all claimants before the court, a new trial is provided for him to whom said rates have not been allowed.

Under the provisions of the Act of June 16, 1880, judgments were to be paid in 3.65 bonds. But before the delivery of such bonds in payment, the coupons, representing interest, must be detached from date of bond to the day upon which such claims were due and payable. That is that the claimant should receive interest at 3.65 per cent. upon the bonds received, from the time his claim became due and payable.

In adjudication cases under this act the Court of Claims has uniformly had its judgment state the time when the claim became due and payable, and that time was the date of the completion of the work by the claimant. Congress knew of these decisions of the court, and its practice and form of entering judgment; and yet in its Act of February 13, 1895, it gave the court no instructions in this particular; and hence, as said act was one of instruction to the court, the inference is that Congress was satisfied with the action of the court in every particular, except as to the substitution of board rates.

Any other construction of this act would not only be contrary to the spirit as well as the letter of the statute, but would be absurd, and, in part, defeat the relief intended to be granted. For the court to attempt to do ought than base its computation on "board rates," would violate the letter as well as the spirit of the instruction.

Numerous judgments were rendered under said act, bearing interest, were paid, and the amounts thereof duly transmitted to Congress in the reports of the Secretary of the Treasury, thus informing the legislative branch of the practice under said act and the findings of the Court of Claims in the matter.

In the Fourth Annual Report of the Treasurer of the United States on the Sinking Fund and Funded Debt of the District of Columbia, made to the Secretary of the Treasury under date of January 1, 1882, and by the latter official transmitted to Congress, in speaking of claims arising under the Act of 1880, it is said:

> "The judgments thus far rendered have been mainly upon debts of the District due and payable in 1874, and consequently required the payment of interest at 3.65 per cent. from that year. To accomplish this bonds of the 3.65 loan are issued, with coupons attached, carrying interest from the proper date in that year."

And in the Eleventh Annual Report of the same official to the Secretary of the Treasury, under date of October 1, 1888, and transmitted in like manner, is a list of judgments of the Court of Claims paid by the Treasury Department in conformity with section 6 of the Act of June 16, 1880, and the interest thereon at rate of 3.65 per cent. per annum, the judgments aggregating $213,730.34 and the interest $71,136.88.

Congress was also advised by the decisions of the Court of Claims and Supreme Court of the United States that judg-

ments under said Act of 1880 were rendered due and payable as of the time the work was completed.

Gallagher et al. *vs.* D. of C., 19 Ct. Clms.; affirmed, S. C. U. S., 124 U. S. 505.

Stewart *vs.* D. of C., 19 Ct. Clms. 98, and many others.

Surely if Congress had desired a different rule to prevail under the amendatory act, with the light before them, they would have so legislated as to have prevented the payment of interest by the Secretary of the Treasury from the time when the Court of Claims found the judgments due and payable.

The appellant in its brief makes this statement:

> "The 3.65 bonds, bearing date August 1, 1874, were received in payment of the judgments under that act of 1880. The coupons were detached from the date of the bonds to the day upon which such claims were due and payable. That day was the date of the final settlement between the contractor and the District authorities, or rather the date when the work was completed. The formula, used in all judgments, recited that the amount was due and payable as of that day. Notwithstanding the Court of Claims, in some instances, made the debt due and payable on a day prior to the date of the bond, yet no interest accrued or was payable on these classes of indebtedness until after that time. By the Act of March 3, 1881, Congress again made the payments of the judgments in money. To be sure the money was received from the sale of the bonds, but interest was paid from the date when the debt was found to be due. The coupons representing this interest were detached from the bonds before the bonds were sold, and paid at the Treasury to the debtor" (26).

No question is apparently made by the counsel for the District that if this claim which ripened into a judgment under the Act of February 13, 1895, had come within the

scope of the provisions of the Act of 1880 the claimant would have been entitled to interest upon the amount found due from the date when the work was completed, or when the court ascertained the sum was due and payable. In what respects has Congress changed the provisions of the earlier act so as to change the practice and require a different method under the later act? The Act of 1895 is simply an amendment of the Act of 1880, and does not in any way alter or modify the terms of the original enactment save that it requires the court to give the claimant a new trial if in determining his case under the first act he was not allowed the rates established and paid by the board of public works. It simply extended the jurisdiction of the court to a class of claims, while properly within the equitable protection and scope of the original act, was not enumerated in and did not technically or legally fall under those provided for. Granting the claimant a new trial puts him in the position, it is contended, as though the relief granted by the amendatory act had been included within the terms of the Act of 1880.

Under the Act of February 21, 1871, the District of Columbia was made a municipal corporation, and although, in many respects, it lacks elements ordinarily incidental to such a body, the Supreme Court in the case of Barnes *vs.* The District of Columbia (91 U. S. 540) and the Metropolitan Railroad Company *vs.* The District of Columbia (132 U. S. 1) hold that the District of Columbia was such a corporation, and amenable to the principles of law applicable to one.

It has been sought by the appellant to place itself in the same position as though the United States was the real defendant and thus to escape liability which would otherwise attach to it on the question of interest. If this were the case the ordinary Statute of Limitations would not apply to the District, but as will be seen by the case referred to of Railroad Company against the District, in 132 U. S., this

court expressly held that the Statute of Limitations of Maryland of 1715, barred the District from collecting certain claims against the said railroad company.

In the case of Bundy *vs.* The United States (21 Ct. Clms. 429), the Court of Claims held:

> "That the District of Columbia is a municipal corporation, having revenues and subject to liabilities distinct from those of the United States, whose contributions for the payment of one-half of the estimated expenses of the District to be disbursed 'only on requisition of the Commissioners of the District' (22 Stat. L., 144), create no priority of contract directly with the creditors of the corporation any more than does the payment of the other half by the taxpayers of the District create such priority of contract between them and its creditors.
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> . . . . . .
>
> But except in cases where Congress has otherwise provided, the United States are not legally liable for the debts of the District of Columbia, whatever may be their moral obligation to make provision in some way for the payment of the debts of a municipal corporation over which they have exclusive control, and which can create no debts not authorized by the laws of Congress."

In the case of the United States *vs.* McKee (91 U. S. 442), the Supreme Court held that even in cases in which the United States was a party, interest was allowed under certain circumstances. The court said:

> "It has been the general rule of the officers of Government, in adjusting and allowing unliquidated and disputed claims against the United States, to refuse to give interest. That this rule is sometimes at variance with that which governs the acts of private citizens in a court of justice would not authorize us to depart from it in this case. The rule, however, is not uniform; and especially is not so in regard to claims allowed by special acts of Congress, if referred by such acts to some department or officer for settlement."

These are cases which have been referred to the Court of Claims for settlement and ascertainment of the amount due. The language of the act is that "the Court of Claims shall allow the rates," etc., leaving them no discretion in the matter, and the statute is mandatory in the same sense as a similar direction or command to an officer of a department to audit and settle an account of a certain officer or employee. When, however, we come to see the terms and manner, as well as time of allowance of rates, we have to resort to the prior act, where the same are set forth at large.

The only reasons assigned in the brief for the appellant for disallowing interest are, first, that the act of Congress in question grants a gratuity; and second, that the amount of claims filed under the act are large. There is nothing in the record upon either of these points. It is matter of assumption without proof. The report of the congressional committee set out in the brief for the appellees in Nos. 617 and 618, embodying a recommendation of the commissioners of the appellant, shows that the act in question does not create a gratuity, but simply does justice by securing to claimants the payment of the same rates which were paid others for the same kind of work at the same time, and that the rates were reasonable. Congress knew that the contractors with the board of public works were compelled, in settlement of their accounts, to accept auditor's certificates, which realized to them only about one-half of their face value, and that the courts had decided that although they were forced to incur such a loss there was no redress against the District. This with other facts brought to their attention, as shown by the report of Commissioners, were prominent factors in securing favorable passage of the amendatory law. There was certainly ample consideration for its passage; and as the parties who thus suffered had been deprived of the use of their money from the completion of the work, Congress did not see fit to change the terms of the act of Congress of 1880 under which interest was allowed.

Although the claimant does not consider the statement of appellant's counsel with respect to the amount involved in the different cases pending in the Court of Claims and falling under the terms of the statute of February 13, 1895, material, yet for the sake of having the matter appear in its true light, as shown by the records of said court, it is shown that there were 98 cases in which motions for a new trial were allowed, 49 of which, involving $775,982.80 have been disposed of. Judgments have been paid in the sum of $36,500.41 and judgments have been recovered, but not paid, in the sum of $45,460.18. And as to the judgments given and satisfied, the interest allowed was paid without any objection upon the part of the appellant, though in the same situation as these claims. But whether this is so or not it throws no light upon the legal rights of the claimants to interest. The total amount actually involved, not only in the cases which have heretofore passed to judgment, but those remaining undisposed of, will not exceed the sum of $200,000, the latter a very liberal estimate.

It is respectfully submitted that the judgment of the Court of Claims should be affirmed.

EDWIN FORREST,
For Appellee.